



Written by [Joe Wolverton, II, J.D.](#) on May 28, 2023

Is “Meaningful Reform” Enough to End FISA’s Assault on the Fourth Amendment?

[Yahoo News reports](#) that Representative Chris Stewart (R-Utah) says that the expansive surveillance authority assumed by federal agencies under the Foreign Intelligence Surveillance Act (FISA) will not be re-authorized without “meaningful reform.” The story on Yahoo (as published on DeseretNews) goes on to attribute Stewart’s opposition to rubber-stamping the surveillance program stems to its use in “spying on the Trump campaign and on hundreds of thousands of Americans.”

While Representative Stewart is undoubtedly justified in his criticism of the use of federal surveillance capabilities to spy on Donald Trump and on any other American, to call for “meaningful reform” simply misses the mark constitutionally.

Of course, one couldn’t expect Stewart to call for the end of a policy he promoted. As reported on Yahoo:

In an interview with the Deseret News on Wednesday, Stewart said when the law came up for reauthorization five years ago, he was “one of the key advocates for it,” saying he helped persuade other lawmakers to support it.

“If you’ve lost guys like me, then you’ve lost a lot of people who are saying, not going to do it again. I’m not going to allow this kind of abuse we’ve seen over the last five years without some changes,” he said. “And I think that represents a broad majority of Republicans and some Democrats as well.”

One of the primary concerns surrounding FISA is its potential violation of the Fourth Amendment to the United States Constitution, which protects citizens from unreasonable searches and seizures. FISA allows for secret surveillance and wiretapping of American citizens without the requirement of probable cause. The Fourth Amendment, however, demands that searches and seizures must be conducted upon obtaining a warrant based on probable cause, supported by oath or affirmation.

Additionally, FISA has been criticized for enabling warrantless surveillance, especially through Section 702, which grants the government broad authority to monitor communications of non-U.S. persons located abroad. While the purported goal is to gather foreign intelligence, this provision has been exploited to collect vast amounts of data on American citizens whose communications have been caught in the surveillance net. Such indiscriminate collection of data without individualized suspicion violates the Fourth Amendment.



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Moreover, the bulk data collection programs, as revealed by whistleblower Edward Snowden, demonstrate the extent of government intrusion into private lives. The collection of the phone records and internet metadata of millions of innocent individuals without their consent or knowledge is an affront to constitutional principles. The argument that these programs are necessary for national security does not absolve the constitutional concerns they raise.

Next, even the way FISA-authorized surveillance is challenged is anathema to liberty and a free government that is the servant of the people.

The secretive nature of the Foreign Intelligence Surveillance Court (FISC), established under FISA, raises further concerns. The court operates behind closed doors, without an adversarial process whereby the government must justify its actions to a neutral judge. This lack of transparency contradicts the principles of due process and undermines the essential checks and balances that prevent government overreach.

Behind closed doors is a place for secret courts, not for hearings designed to protect the constitutional rights of citizens. The abuse and anonymity is reminiscent of another secret tribunal — the Star Chamber.

The Star Chamber was an English court of the 14th to 17th centuries that met in secret, with no record of indictments, no identification of witnesses, and no transcript of the proceedings.

Eventually this court was used as a political weapon, a way for the king and Parliament to secretly bypass the ancient English constitution and prosecute their enemies, keeping the dirty details hidden from the public.

The analogy of the FISA court's absolute approval of requests by the government to monitor citizens' electronic communication to the decisions of the Star Chamber is apt and accurate on many points, it seems.

Perhaps the most disturbing effect of the FISA court's behavior is the fact that the government considers the protections of the Fourth Amendment to be nothing more than a "parchment barrier" that is easily torn through. Now that the Constitution is regarded by the federal government as advisory at best, there is nothing standing between the citizens of this nation and the construction of a 21st-century panopticon.

In this country, then, every citizen is now a suspect and the scope of the surveillance is being expanded to place every word, every movement, every text, every conversation, every email, and every social-media post under the never-blinking eye of the federal domestic spying apparatus.

The hour is now late if this union is to remain a land under the rule of law. To that end, it is critical that Americans recognize that FISA and the FISA court's rubber-stamping of the exercise of the federal government's sweeping surveillance programs is in direct, open, and hostile violation of the Constitution.

Finally, as FISA comes up before Congress for that body's decision of whether to reauthorize its continuing operation, Americans should remember that the policies that permit this data sharing and grant such secret authority to the NSA and the FISA court are such a shameful disregard for our long history of individual-based human and civil rights (including the freedom from unwarranted searches and seizures), that it shocks the conscience even when the source is considered.

Taken together, the roster of snooping programs in use by the federal government places every



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American under the threat of constant surveillance. The courts, Congress, and the president have formed an unholy alliance bent on obliterating the Constitution and establishing a country where every citizen is a suspect and perpetually under the never-blinking eye of the government.

The establishment will likely continue construction of the surveillance apparatus until the entire country is being watched around the clock and every monitored activity is recorded and made retrievable by agents who will have a dossier on every American.

While the federal government carries on collecting and cataloging data on every American, there are those who recognize that something stronger than milquetoast “meaningful reform” is necessary to dismantle domestic surveillance and restore the Fourth Amendment.



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